



UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

and

STATE OF MINNESOTA, by its
Attorney General Hubert H.
Humphrey, III, its Department
of Health, and its Pollution
Control Agency,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION;
HOUSING AND REDEVELOPMENT AUTHORITY
OF ST. LOUIS PARK; OAK PARK VILLAGE
ASSOCIATES; RUSTIC OAKS CONDOMINIUM,
INC.; and PHILIP'S INVESTMENT CO.,

Defendants,

and

CITY OF ST. LOUIS PARK,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION,

Defendant,

and

CITY OF HOPKINS,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION,

Defendant.

Civil No. 4-80-469

ANSWER OF REILLY TAR
& CHEMICAL CORPORATION
TO THE CROSSCLAIM OF
PHILIP'S INVESTMENT CO.

Reilly Tar & Chemical Corporation ("Reilly") for its answer to the crossclaim herein of Philip's Investment Co., states and alleges as follows:

1. Denies paragraph 1.

2. As to paragraph 2, insofar as crossclaimant realleges and incorporates by reference the allegations of plaintiff United States of America made in its complaint (or amended complaint) herein, Reilly states that it has answered the plaintiff's amended complaint and herein realleges and incorporates by reference the Amended Answer of Reilly Tar & Chemical Corporation to Amended Complaint of United States of America, a copy of which is attached hereto as Exhibit A and made part hereof, including all affirmative defenses, against crossclaimant Philip's Investment Co. Reilly otherwise denies paragraph 2.

3. Denies sufficient knowledge to form a belief with respect to paragraph 3.

4. Except as otherwise expressly stated herein, denies each and every allegation contained in the crossclaim.

Affirmative Defenses

5. Alleges that the crossclaim herein fails to state a claim upon which relief may be granted.

6. Alleges that, insofar as crossclaimant Philip's Investment Co. derives its title to the property in question through any chain of title from the City of St. Louis Park or one or more of its agencies, crossclaimant is estopped by the

terms of the Agreement for Purchase of Real Estate executed by the City and Reilly April 14, 1972, and the hold harmless agreement entered into between Reilly and the City of St. Louis Park on June 19, 1973, from recovering anything as against Reilly on its crossclaim. Said agreements are attached hereto as Exhibits B and C, respectively, and made a part hereof.

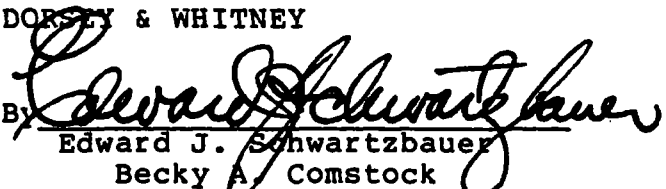
7. Alleges that crossclaimant Philip's Investment Co. is subject to all defenses, including all affirmative defenses, which Reilly has asserted in the Second Amended Answer of Reilly Tar & Chemical Corporation to the Amended Complaint in Intervention of the City of St. Louis Park in this matter, a copy of which is attached hereto as Exhibit D and made part hereof, which defenses Reilly herein realleges against crossclaimant Philip's Investment Co. and incorporates the same by reference.

WHEREFORE, Reilly Tar & Chemical Corporation prays that this Court enter judgment in its favor granting no relief to the crossclaimant but awarding to Reilly Tar & Chemical Corporation its costs and disbursements and such other relief as this Court deems just and appropriate.

Dated: June 29, 1983.

DORSEY & WHITNEY

By


Edward J. Schwartzbauer
Becky A. Comstock
Michael J. Wahoske
2200 First Bank Place East
Minneapolis, Minnesota 55402
Telephone: (612) 340-2825/2987/8755

Attorneys for Reilly Tar &
Chemical Corporation

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

UNITED STATES OF AMERICA,

Civil No. 4-80-469

Plaintiff,

and

STATE OF MINNESOTA, by its
Attorney General Hubert H.
Humphrey, III, its Department
of Health, and its Pollution
Control Agency,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION;
HOUSING AND REDEVELOPMENT AUTHORITY
OF ST. LOUIS PARK; OAK PARK VILLAGE
ASSOCIATES; RUSTIC OAKS CONDOMINIUM,
INC.; and PHILIP'S INVESTMENT CO.,

Defendants,

AMENDED ANSWER OF
REILLY TAR & CHEMICAL CORPORA-
TION TO AMENDED COMPLAINT OF
UNITED STATES OF AMERICA

and

CITY OF ST. LOUIS PARK,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION,

Defendant,

and

CITY OF HOPKINS,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION,

Defendant.

Reilly Tar & Chemical Corporation (hereinafter "Reilly")
for its answer to the amended complaint herein, admits and alleges
as follows:

1. Admits that this is a civil action brought by the
United States on behalf of the Administrator of the United States
Environmental Protection Agency; and admits that this action
seeks a judgment as described in paragraph 1.

2. Admits that this Court has jurisdiction under the
provisions of 42 U.S.C. §§ 9607 and 9613, if those sections may
constitutionally be applied in this case, but denies that this
Court has jurisdiction over this case under the other provisions
of law referred to or under any other provisions of law.

3. Admits that venue is proper in this District,
provided the Court has jurisdiction over the subject matter of
the action.

4. Admits paragraph 4.

5. Admits paragraph 5.

6. Admits paragraph 6.

7. Admits paragraph 7, but denies that Reilly gener-
ated "chemical wastes" as that term is normally used in common
parlance; admits and alleges that the refining of coal tar and
the treatment of wood products resulted in the generation of
waste water and small quantities of waste which were residuals
of coal tar.

8. Admits paragraph 8.

9. Admits paragraph 9.

10. Admits paragraph 10.

11. Admits paragraph 11, but specifically alleges that the original complaint in the 1970 action, together with the allegations made by the agents and attorneys for the City of St. Louis Park and the State of Minnesota, at all times alleged pollution of the groundwater.

12. Admits that the United States has funded certain activities relating to the former Reilly site in St. Louis Park and relating to studies of the groundwater in Minnesota generally, but denies that the costs incurred are reasonable and cost-effective and specifically alleges that such costs were not consistent with the National Contingency Plan.

13. Admits that the coal tar waste products which result from the refining of coal tar and the treatment of wood products with creosote oil may consist of the chemicals described in paragraph 13.

14. Denies sufficient knowledge to form a belief with respect to paragraph 14.

15. Denies sufficient knowledge to form a belief with respect to paragraph 15.

16. Denies sufficient knowledge to form a belief with respect to paragraph 16.

17. Admits that small quantities of the residuals of coal tar were spilled and leaked by Reilly onto and into the ground at the former Reilly site.

18. Admits that unknown quantities of the residuals of coal tar generated by the refining of coal tar and the treatment of wood products exist at present in the ground at and surrounding the former Reilly site.

19. Denies sufficient knowledge to form a belief with respect to paragraph 19.

20. Admits that the groundwater beneath and surrounding the former Reilly site is a part of a system of aquifers which supply water to St. Louis Park and other parts of the metropolitan area, and that the industrial and drinking water wells have been drilled into the aquifers; denies sufficient knowledge to form a belief with respect to the remaining allegations in paragraph 20.

21. Admits that St. Louis Park and Hopkins and other municipalities obtain drinking water from the system of aquifers extending beneath the former Reilly site and that St. Louis Park and Hopkins closed five wells and one well, respectively, because they were instructed to do so by the State of Minnesota, but denies the remaining allegations in paragraph 21.

22. Denies sufficient knowledge to form a belief with respect to paragraph 22.

23. Denies sufficient knowledge to form a belief with respect to paragraph 23.

24. Admits paragraph 24.

25. Admits paragraph 25.

26. Denies paragraph 26.

27. Admits paragraph 27.

28. Admits paragraph 28.

29. Denies paragraph 29.

30. Denies paragraph 30.

31. Admits paragraph 31.

32. Admits paragraph 32.

33. Admits paragraph 33.

34. Admits paragraph 34.

35. Admits paragraph 35.

36. Admits paragraph 36.

37. Admits that Releases, as defined in Section 101(22) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 occurred during the period 1917 to 1972.

38. Admits that the activities of Reilly between the years 1917 and 1972 resulted in releases as defined in the Act, but denies that releases of hazardous substances are threatened to occur in the future.

39. Denies paragraph 39.

40. Admits paragraph 40.

41. Admits paragraph 41.

42. Admits paragraph 42.

43. Admits paragraph 43.

44. Admits that the United States has funded certain activities relating to the former Reilly site, but denies that the costs thereof are reasonable and cost-effective, and specifically alleges that such costs were not consistent with the National Contingency Plan.

45. Denies paragraph 45.

46. Except as otherwise herein expressly admitted, denies each and every allegation contained in the Amended Complaint.

FIRST AFFIRMATIVE DEFENSE

47. The complaints giving rise to this action were settled by agreement between the State of Minnesota, the City of

St. Louis Park and this defendant by virtue of an Agreement for Purchase of Real Estate executed by the City and this defendant April 14, 1972. The State of Minnesota accepted that settlement at that time and subsequent thereto. Said Agreement is attached hereto as Exhibit A and made a part hereof.

SECOND AFFIRMATIVE DEFENSE

48. The complaints giving rise to this action are not the responsibility of this defendant because of a hold harmless agreement entered into between this defendant and the City of St. Louis Park on June 19, 1973, which provides, in part, that the City will hold this defendant harmless from any and all claims which may be asserted against it by the State of Minnesota and will be fully responsible for restoring the property, at its expense, to any condition that may be required by the Minnesota Pollution Control Agency. A copy of said agreement is attached as Exhibit B and is made a part hereof.

THIRD AFFIRMATIVE DEFENSE

49. The liability of the City of St. Louis Park and the non-liability of this defendant to remedy the alleged groundwater contamination problems alleged in the complaint has been fully adjudicated by the Minnesota Pollution Control Agency on behalf of the United States Environmental Protection Agency in an adjudicative administrative proceeding entitled, "In the Matter of the Application of the City of St. Louis Park for a National Pollutant Discharge Elimination System Permit," file no. MN0045489.

FOURTH AFFIRMATIVE DEFENSE

50. Alleges that the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and the Resource Conservation and Recovery Act of 1976, as amended, upon which the plaintiff relies in its Claims for Relief, violate the Fifth Amendment of the United States Constitution in that application of either or both statutes to the facts of this case would deprive the defendant, Reilly, of its property without due process of law.

FIFTH AFFIRMATIVE DEFENSE

51. Alleges that the complaint herein fails to state a claim upon which relief may be granted.

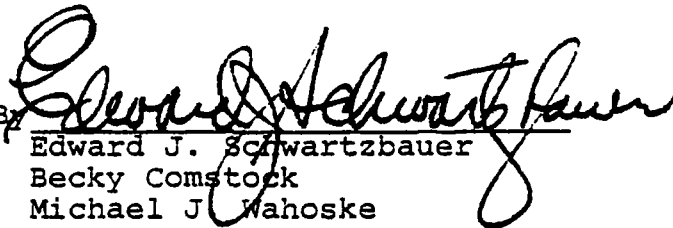
SIXTH AFFIRMATIVE DEFENSE

52. The claims for relief are barred by the doctrine of laches.

WHEREFORE, Reilly Tar & Chemical Corporation prays that this Court enter judgment in its favor granting no relief to the plaintiff but awarding to Reilly Tar & Chemical Corporation its costs and disbursements and such other relief as this Court deems just and appropriate.

Dated: June 29, 1983.

DORSEY & WHITNEY

By 
Edward J. Schwartzbauer
Becky Comstock
Michael J. Wahoske
2200 First Bank Place East
Minneapolis, Minnesota 55402
Telephone: 340-2825/2987-8755

Attorneys for Reilly Tar &
Chemical Corporation

AGREEMENT FOR
PURCHASE OF REAL ESTATE

THIS AGREEMENT, made this 14 day of April, 1972,
by and between Raily Tar and Chemical Corporation (hereafter
"Seller") and the City of St. Louis Park (hereafter "Buyer").

Seller agrees to sell and Buyer agrees to purchase
the following described property located in the City of St. Louis
Park, Hennepin County, Minnesota, legally described as:

Lots 25 through 40, inclusive, Block 306,
Rearrangement of St. Louis Park

Lot 1, Auditor's Subdivision No. 281

upon the following terms and conditions:

1. Purchase Price: Earnest Money. The purchase price
to be paid by Buyer for the subject property shall be One Million
Nine Hundred Thousand Dollars (\$1,900,000.00). Buyer has paid
Seller \$5,000.00 earnest money, the receipt of which is hereby
acknowledged. The balance of \$1,895,000.00 shall be paid by
Buyer to Seller at closing.

2. Closing. Closing shall be October 2, 1972, at the
offices of Yngve, Yngve & Reiersgard, Attorneys, 6250 Wayzata
Boulevard, Minneapolis, Minnesota.

3. Possession Date. Possession shall be turned over to
Buyer as of the date of closing.

4. Condition of Premises. It is understood that as a
part of the consideration of this purchase that the Buyer is
acquiring said premises in an "as is" condition except for the
provisions in number 5 of this agreement and that this "as is"
condition includes any and all questions of soil and water im-
purities and soil conditions; and that the City agrees to make
no claim against the Seller for damages relative to soil and
water impurities, if any, in any way relating to the premises sold

4600473

4-14-72

02000004-ES100004-014004-2811004-400004

herein, or relative to any other premises in which the City of St. Louis Part holds an interest. This provision shall survive the closing of this transaction.

5. Demolition, Removal, and Clean-up Work.

a) Definitions. For purposes of this section, the following definitions shall be applicable:

i) Grade (adjacent ground elevation) is the lowest point of elevation of the finished surface of the ground between the exterior wall of the building and a point five feet distant from said wall, or the lowest point of elevation of the finished surface of the ground between the exterior wall of a building and the property line of it if it is less than five feet distant from said wall. In case walls are within five feet of a public way, the grade shall be the elevation of the public way.

ii) Small masonry shall mean brick, stone, concrete, and non-organic materials 1 1/2 cubic feet or less in content and not more than 24" in any dimension and shall not be capable of compression at less than 1500 pounds per square foot that may easily be ascertained as to density by astute judgment factors of both the demolition contractor and the purchaser's engineering personnel.

b) Work to be Done. Reilly Tar and Chemical Company shall provide for demolition, removal, and clean-up work on the property as follows:

1) Demolish all buildings, structures, and attachments thereto to surrounding grade. Foundations and floors are to be removed to grade or below.

2) Remove above and below grade tanks and demolish supporting pads or legs to grade or below grade.

3) Remove all railroad rail~~road~~ and tie together with associated docks or other structures to surrounding grade or below. Loading dock and tar well structures are to be removed to the piling level, other pile caps, if any not included.

4) Remove above grade piping, poles, walls and miscellaneous structures.

5) Break open tunnels, pits, basements, and cellars to the extent they are known to the seller and remove the below-grade piping or machinery exposed in the work.

6) Fill basements, cellars, pits, tunnels, and low areas with small masonry and earth materials from the site.

7) Dispose off the site the demolition materials and debris not suitable for fill outside of St. Louis Park.

8) Remove container and piping residues and dispose of same at an off site location outside of St. Louis Park.

9) Generally level the site to grade and remove miscellaneous timber, large iron, steel, and remaining debris from site and dispose of at a location outside of St. Louis Park.

10) The site shall be free of all visible demolition materials not suitable for fill, buildings, structures, and attachments thereto remaining above grade. Site finishing shall be accomplished in a workmanlike manner to rough grade conditions.

This work shall be completed by the seller on or before the closing date of October 2, 1972.

All species of trees on the premises shall be protected from damage during the removal of structures and equipment.

This paragraph shall not be applicable to that part of the described property lying Easterly of the Easterly right-of-way line of the proposed Louisiana Avenue extension, which right-of-way line is shown in red on Exhibit A hereto. As to the part of the property lying East of the Easterly right-of-way, Buyer hereby accepts it in an "as is" condition, and Buyer shall be responsible for all demolition, removal, and clean-up work thereon.

6. Real Estate Taxes; Special Assessments. It is also agreed that at or prior to closing the Seller will pay real estate taxes due and payable in 1972 and all special assessments against the subject premises which have been levied prior to January 1, 1972, including the assessment for storm sewer, for which an appeal is now pending, Hennepin County District Court File No. 678582 and will then dismiss said appeal.

7. Seller's Warranty of Title. Subject to performance by the Buyer the Seller agrees to execute and deliver a Warranty Deed conveying marketable title to said premises subject only to the following exceptions:

a) Building and zoning laws, ordinances, State and Federal regulations;

b) Restrictions relating to use or improvement of premises without effective forfeiture provision;

c) Reservation of any minerals or mineral rights to the State of Minnesota;

d) Utility and drainage easements which do not interfere with present improvements.

8. Delivery of Abstract of Title; Marketability of Title.

The Seller shall, within a reasonable time after approval of this

agreement, Enrich an abstract of title, or Regist and Property Abstract certified to date to include proper searches covering bankruptcies, and State and Federal judgments and liens. The Buyer shall be allowed 30 days after receipt thereof for examination of said title and the making of any objections thereto, said objections to be made in writing or deemed to be waived. If any objections are so made the Seller shall be allowed 180 days to make such title marketable. Pending correction of title, the payments hereunder required shall be postponed, but upon correction of title and within 10 days after written notice to the Buyer, or upon closing date, whichever date is later, the parties shall perform this agreement according to its terms. If said title is not marketable and is not made so within 180 days from the date of written objections thereto as above provided, this agreement shall, at Buyer's option, be null and void.

9. Current Litigation. It is understood that this agreement represents a means of settling the issues involved in State of Minnesota, by the Minnesota Pollution Control Agency and the City of St. Louis Park, Plaintiffs, vs. Reilly Tar & Chemical Corporation, Defendant, Hennepin County Minnesota District Court Civil File No. 670767. It is understood that the City of St. Louis Park will deliver dismissals with prejudice and without cost to defendant executed by itself and by the plaintiff State of Minnesota at closing. Defendant Reilly Tar & Chemical Corporation will deliver a dismissal of its counterclaim with prejudice and without cost to plaintiffs.

10. Equipment to Remain on Premises. Seller agrees to identify all wells and leave them intact. The Seller may, at its option, remove the pumping equipment. Seller agrees to leave water main intact and in an operable condition.

11. Continued Use of Premises. Between the date of the purchase agreement and the date of closing, the company may use

the premises ~~is~~ manufacturing the industrial purposes and shall continue all existing pollution abatement procedures that are now in place and installed. The company shall cease all business operation not later than October 1, 1972.

12. Maps, Drawings and Information Concerning the Property.

Upon acceptance of this offer to purchase, Seller shall furnish Buyer with copies of all maps, drawings, and other data and information it may possess concerning the subject property.

13. Damages for Delay of Closing. In the event this

sale is not closed on or before December 15, 1972, and in the event the purchaser, and any assignee of the purchaser, has not abandoned any right, title and interest in the premises by that date, then as additional damages, the purchaser agrees to pay the Seller an amount equal to the real estate taxes and assessments due and payable on the premises, which are payable in the year 1973, and said payment shall be due by May 1, 1973, and this provision for payment of damages, shall be deemed a payment of part of the earnest money and shall survive any cancellation of the purchase agreement.

14. Assignment of Seller's Rights. It is agreed and

understood that the City of St. Louis Park is executing this agreement on behalf of the Housing and Redevelopment Authority of St. Louis Park. The City of St. Louis Park may assign its rights hereunder to the Housing and Redevelopment Authority of St. Louis Park, or to any other party without the consent of Seller. Any such assignment shall not relieve the City of its obligations hereunder.

REILLY TAYLOR CHEMICAL CORPORATION

By

Its

President

And

Its

Vice President

4657484

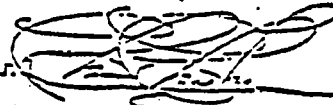
CITY OF ST. LOUIS PAID

By



Its Mayor

At



Its City Manager

468095

Exhibit A

TOR'S
DIVISION

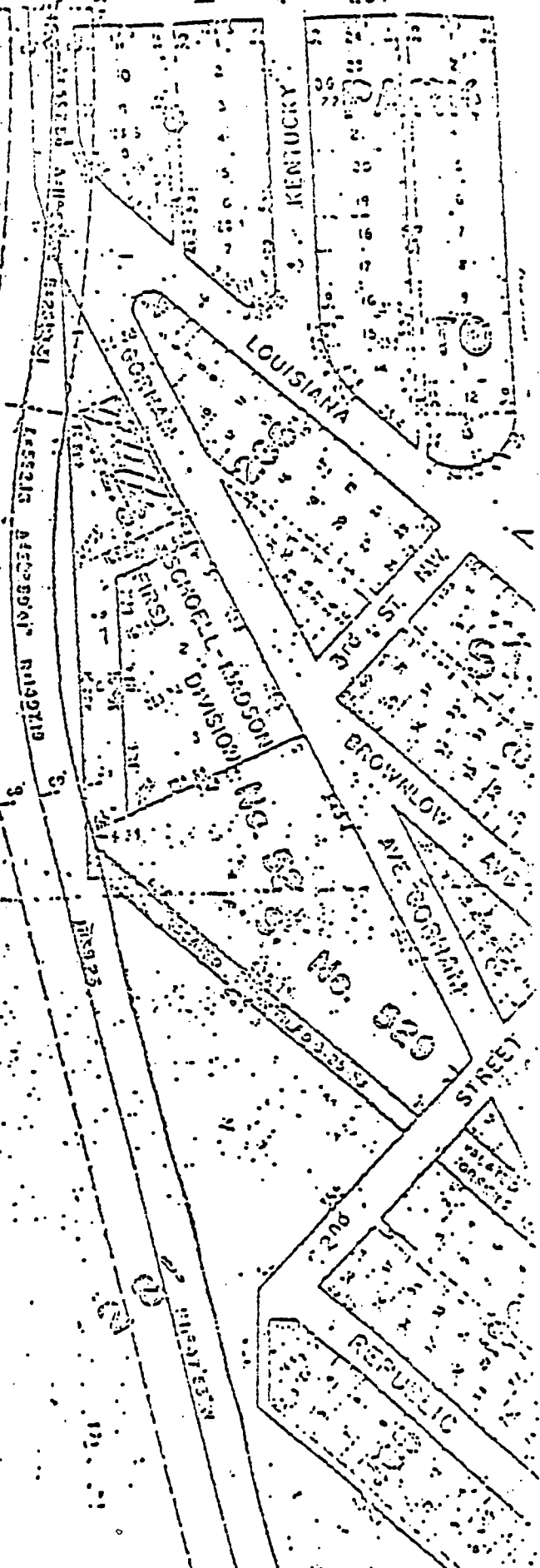
TOR'S
SUBDIVISION

4600786

MBEA

EXHIBIT "A"

20



HOLD HARMLESS AGREEMENT

THIS AGREEMENT, entered into this 19th day of June, 1973 by and between the City of St. Louis Park and Reilly Tar and Chemical Corporation.

Whereas, on April 14, 1972 the City of St. Louis Park (hereafter "City") and Reilly Tar and Chemical Corporation (hereafter "Reilly") entered into an Agreement in which the City agreed to acquire Reilly's property in St. Louis Park;

Whereas, the acquisition of this property by the City was intended as a means of settlement of the issues involved in the State of Minnesota, by the Minnesota Pollution Control Agency and the City of St. Louis Park, Plaintiffs vs. Reilly Tar and Chemical Corporation, Defendant, Hennepin County District Court Civil File No. 670767.

Whereas, the City agreed in the Agreement of April 14, 1972 that it would deliver dismissals of the above noted action with prejudice and without cost to defendant executed by itself and by the plaintiff State of Minnesota at closing;

Whereas, the Plaintiff State of Minnesota has refused at this time to deliver a dismissal of its complaint;

Whereas, the City, and Reilly desire to close the real estate sale and purchase in the manner contemplated in the Agreement of April 14, 1972;

Therefore, it is agreed

1. Dismissal of Action by City

The City will dismiss the action, insofar as and remedy is claimed by the City with prejudice and without cost to Reilly.

2. Dismissal of Counterclaim by Reilly

Reilly will dismiss its counterclaim against the City with prejudice and without cost to the City.

50005279-50004095-40000258-3000108-400781
400783-460358-460361

400781

3. City to Hold Reilly Harmless

The City hereby agrees to hold Reilly harmless from any and all claims which may be asserted against it by the State of Minnesota, acting by and through the Minnesota Pollution Control Agency, and will be fully responsible for restoring the property, at its expense, to any condition that may be required by the Minnesota Pollution Control Agency.



4. Hold Harmless Agreement Supplementary

The Hold Harmless Agreement in Number 3 hereof is intended to be supplementary to the Agreement between the City and Reilly relative to Carl Balander & Sons, and to Paragraph 4 of the Agreement of April 14, 1972 between the City and Reilly for the purchase of real estate.

5. City and Reilly to Proceed to Closing



Reilly and the City will proceed to the closing of the real estate transaction contemplated by the Agreement between the parties of April 14, 1972, as amended by the Contract for Deed of October 12, 1972.

Reilly Tar and Chemical Corporation

By 
Its 

And _____
Its _____

City of St. Louis Park

By 
Its Mayor-
And 
Its City Manager